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Letter dated 21 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Spain, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

[Original: Spanish]

Note verbale dated 21 December 2001 from the Permanent Mission of Spain to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001)

The Permanent Mission of Spain to the United Nations presents its respects to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) and has the honour to transmit herewith the report submitted by Spain pursuant to paragraph 6 of resolution 1373 (2001) (see enclosure).

Enclosure

Report submitted pursuant to Security Council resolution 1373 (2001) of 28 September 2001

Paragraph 6 of Security Council Resolution 1373 (2001) calls on all States to inform the Committee on the steps taken to implement the resolution.

This report is based on the questions suggested in "Guidance for submission of reports pursuant to paragraph 6 of Security Council Resolution 1373 (2001) of 28 September 2001".

Paragraph 1

1 A. Prevention and suppression of the financing of terrorist acts.

Sub-paragraph (a) - *What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d)?*

Action to be taken against the financing of terrorist acts is set forth in the Penal Code, which describes specific offences and establishes criminal liability based on the extent of an offender's involvement in the act. Similarly, both the prevention and the suppression of the financing of terrorist acts are also specifically envisaged in other provisions and in recently adopted legislation, as mentioned below.

1 B. Criminalize the wilful provision or collection of funds in order to carry out terrorist acts.

Sub-paragraph (b) - *What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?*

This question – as well as all the questions raised in connection with paragraph 1 – calls for a detailed reply:

1. Having lived for years under the threat of terrorism, especially as represented by the terrorist organization ETA, the Spanish authorities who deal with terrorism at all levels of responsibility have been constantly vigilant in this regard.

2. From the normative standpoint, Spanish law includes a very broad range of criminal provisions which provide protection against terrorism. Most of these provisions are included in the articles of the Penal Code that are reproduced in Annex 1 herewith.

3. The different preparatory activities leading up to terrorist acts are typified as "terrorist offences". Such activities range from conspiracy to commission. Many different types of collaboration with intent to commit terrorist acts are also criminal offences, as is the advocacy of terrorism.

The following provisions of the Penal Code (in its latest version, as amended by Organic Law 7/2000 of 22 December) deal with fund-raising and the financing of terrorism in general:

Article 575

Anyone who attempts a crime against property in order to obtain funds for the armed groups, organizations or terrorist groups mentioned above, or to further their purposes shall be punished with a penalty at the level next highest to the one prescribed for the offence committed, without prejudice to the enforcement of such penalties as are applicable under the following article for acts of collaboration.

Article 576

1. The performance, requesting or facilitation of any act of collaboration with the activities or purposes of an armed group or terrorist organization or group shall be punishable by imprisonment of five to ten years and fines equivalent to 18 to 24 months.

2. "Acts of collaboration" shall be understood to mean the supply of information on or the surveillance of persons, goods or facilities; the building, fitting-out, transfer or use of lodging or storage facilities; the concealment or movement of persons linked to armed groups or terrorist organizations or groups; the organization of training sessions or attendance at such sessions; and, in general, any other equivalent form of cooperation, assistance or complicity, economic or otherwise, with the activities of the aforementioned armed groups or terrorist organizations or groups.

The criminalization of activities related to terrorism is supplemented with the regulations on money laundering set out in the Penal Code itself, particularly articles 301 and following, the text of which is provided in Annex II.

The initiation of criminal proceedings for the aforementioned offences entails seizing the money, effects or other assets used to commit the terrorist act, the proceeds of such acts, and the effects thereof. Such seizure may be undertaken as a precautionary measure for the duration of the proceedings. This is allowed and justified in articles 13, 326, 334 and 589 of the criminal prosecution act. Given the need to safeguard the effects and instruments used to commit the offence, the means of proof and the pecuniary liabilities arising from it, the authorities may swiftly proceed to block bank accounts and take other precautionary steps to control the offenders' funds.

In addition to precautionary intervention, once the court's final ruling is handed down, the assets and funds used in furthering terrorist goals, from the preparatory stage onward shall be subject to seizure, given that they represent the effects of the offence, the instruments used to commit it and the profits thereof, regardless of any changes they may have undergone (article 127, Penal Code). Given that the criminal prosecution of terrorism begins at the very earliest stage, the seizure extends to all items used in preparing the act. Accordingly, the court-ordered "freezing of assets" covers all such items.

1 C. Freeze without delay funds and other financial assets of persons who commit, or attempt to commit, terrorist acts and of entities linked to such persons.

Sub-paragraph (c) - *What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.*

In addition to the aforementioned court-ordered freezing of funds and financial assets, the freezing of funds and assets in third-party countries with respect to persons involved in terrorist acts is provided for in article 2, paragraphs 3 and 4, of law 40/1979, on exchange controls, of 20 December, which were added by law 41/1999, of 12 November, on payment systems. Paragraph 3 provides for the domestic application of measures aimed at freezing the movement of funds to and from other countries, when such measures have been adopted by the European Union; paragraph 4 deals with measures adopted by international organizations of which Spain is a member. Furthermore, the relevant European regulations (Council decision of 6 March 2001 and Commission decisions of 4 July 2001 and 12 November 2001) are effective, directly applicable and prevalent; hence, they are directly enforceable in our legal system.

Article 3 of law 19/1993 of 28 December, on measures for the prevention of money laundering, imposes a number of obligations on financial entities and other persons involved in the transfer of capital, collection, payments and other transactions that are a part of daily life. Such entities and individuals must refrain from conducting any transaction in which the issuer or recipient of funds might be a person linked to activities involving armed groups or terrorist organizations or groups. This obligation may be interpreted as including the

freezing of balances pursuant to the United Nations resolution in question. Such freezing would be effective even in the case of domestic movements of funds.

It should be noted that the Committee of Ministers, meeting on 30 November 2001, approved an agreement designed to facilitate compliance with United Nations Security Council Resolution 1267 (1999) and related Security Council resolutions, in the spirit of resolution 1373 (2001), as well as Council regulation CE 467/2001, of 6 March 2001, concerning terrorist organizations and groups. These are listed in an annex which includes a consolidated list of organizations and persons identified by the Committee established pursuant to Security Council resolution 1267 (1999).

In keeping with the principles which inspired resolution 1373 (2001), at the aforementioned Committee of Ministers of 30 November, draft legislation on the prevention and suppression of the financing of terrorism was introduced which envisages the creation of a terrorism financing oversight committee. This committee would be empowered to block balances, accounts and positions opened by persons or entities linked to terrorist organizations with the entities referred to in the bill.

1 D. Prohibit their nations or any persons and entities within their territories from making funds available for the benefit of persons who commit or attempt to commit terrorist acts.

Sub-paragraph (d) - *What measures exist to prohibit the activities listed in this sub-paragraph?*

The prohibition envisaged in this paragraph follows from the criminalization of the activities referred to in sub-paragraph 1 B and the freezing of assets referred to in sub-paragraph 1 C. Hence, the two preceding sections also apply to this sub-paragraph.

2 A. Refrain from providing any form of support to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and the supply of weapons to terrorists.

Sub-paragraph (a) - *"What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups, and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?*

Legislation:

The Spanish Penal Code, which was approved pursuant to Organic Law 10/1995 of 23 November, punishes any act of collaboration with armed groups or terrorist organizations or groups (art. 576). The recruitment of members would constitute a form of collaboration. In addition, Organic Law 7/2000, of 23 December, provides for special measures in cases involving persons under 18 years of age who commit terrorist offences, given the involvement of minors in terrorist activities in Spain.

Article 573 of the Penal Code provides penalties for the storing of weapons or munitions and the possession or storage of explosive, flammable, incendiary or asphyxiating substances or devices or components thereof, as well as their manufacture, trafficking, transport or supply, in any form, and the mere placement or use of such substances or of other means or contrivances for achieving the same purpose by persons acting at the service of or in collaboration with armed groups, organizations, or terrorist groups.

The Organic Law on the safeguarding of public security (L.O. 1/1992 of 23 February) establishes strict guidelines for preventive action and vigilance with respect to the manufacture and repair of weapons, imitations and reproductions thereof and their basic components; explosives, cartridges and pyrotechnic devices; and the circulation, storage and merchandising, acquisition, sale, possession and use of such items.

Steps taken:

Our legislation provides for the following steps to be taken to prevent the procurement of weapons:

(a) In order to open for business and operate, all factories, workshops, storage facilities, sales establishments, shooting galleries and related activities are subject to requirements relating to registration or classification, licensing, reporting, inspection, oversight and control; in addition, the staff responsible for handling weapons must be duly qualified.

(b) Licenses or permits for the possession and use of firearms are mandatory and are issued subject to certain restrictions, especially in the case of weapons of personal defence, for which licenses or permits are issued only when strictly necessary.

(c) Certain especially dangerous weapons, munitions and explosives are prohibited, as is their storage.

(d) The manufacture, marketing or distribution of weapons and explosives are subject to special licensing regulations under the laws governing foreign investments in Spain, and in any event, are under the oversight of the Ministries of Defence and of the Interior.

Spain is an active participant in the major international forums for the discussion and exchange of information on the trafficking of arms and weapons of mass destruction.

Information is exchanged and joint analyses are carried out by the various units specialized in the deactivation of explosives.

After the tragic attacks of 11 September, Spain has intensified its controls over goods that could be used to manufacture weapons of mass destruction.

During the first half of 2002, Spain will assume the Presidency of the European Union. One of its objectives will be to strengthen police cooperation and existing crime-prevention instruments, particularly in matters pertaining to youth, drugs and urban crime, with special attention to the training of youth by violent organizations.

2 B. Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information

Sub-paragraph (b) – *What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?*

Legislation:

Spain has signed many international and community commitments which provide mechanisms for the rapid exchange of information, including the following:

- The Schengen agreement
- The Europol agreement
- The Interpol agreement

In recent years, Spain has also signed a number of bilateral agreements on cooperation in combating crime which include the struggle against terrorism.

Steps taken:

Collaboration with other countries:

Transfer of information on terrorist groups and movements of their activists.

Exchange of information through liaison officers in and from other countries.

Exchange of techniques and experiences with other services involved in combating terrorism, including joint training programmes.

Participation of experts and exchange of information at bilateral or multilateral meetings on techniques and methods for the forgery of identity papers, passports, visas, residence permits, etc.

Exchange of information and analyses with a view to assessing terrorist threats.

On the domestic front, after the events of 11 September we adopted the following:

- A specific plan of action to be implemented in the event of a terrorist attack with conventional weapons.
- Preventive and rapid-response measures to neutralize a terrorist attack or attempted attack with chemical or biological materials.
- An operational preventive plan for studying and gaining knowledge about the ideology, objectives, modus operandi, etc., of the various terrorist organizations.

2 C. Deny safe haven to those who commit or collaborate in terrorist acts.

Sub-paragraph (c) – *What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph? It would be helpful if States supplied examples of any relevant action taken.*

Legislation:

Law 5/1984 of 26 March, on the right of asylum and the status of refugees, as amended by law 9/1994 of 19 May, stipulates that asylum shall not be granted to persons covered by the provisions of articles 1F and 33.2 of the 1951 Geneva Convention relating to the Status of Refugees. Acts of terrorism are covered by these provisions, in particular article 1.F(b), which refers to serious non-political crimes.

Article 5.6 of the law on asylum provides that in the aforementioned cases, even a request for asylum may be dismissed directly.

The law on the rights and freedoms of foreigners in Spain and their social integration (L.O 4/00 of 11 January, amended by L.O. 8/00 of 22 December) provides that foreigners shall be refused entry into Spain when there are legally established grounds for doing so or when such action is allowed under international agreements (art. 26). Article 54 of the law establishes as a serious offence participation in activities that threaten the external security of the State or which might be detrimental to the relations of Spain with other countries. Such activities are punishable with expulsion from the Spanish territory (art. 57).

Steps taken:

The concept of terrorist offence is a very broad one in our criminal law, which precludes granting asylum to terrorists. This prohibition covers not only those directly and materially responsible for committing an act but

also the intellectual instigators and persons involved in planning it, those in charge of raising funds or providing logistical support to the direct perpetrators, and others.

2 D. Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens.

Sub-paragraph (d) – *What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.*

Legislation:

The passive extradition law of 21 March 1985 provides that terrorist acts may not be considered political offences for the purpose of refusing extradition.

Spain is a party to many bilateral and multilateral agreements relating to extradition. It has ratified the two European Conventions on the matter (1995 and 1996). It is also a party to the 1957 European Convention on Extradition.

The European Union has adopted the framework decision on the European Arrest Warrant, which will supersede extradition proceedings and the double criminality requirement for certain offences, including the offence of terrorism.

The European Union has also adopted a framework decision on combating terrorism, which includes a broad definition of terrorist offences and is linked to the framework decision on the European Arrest Warrant.

Steps taken:

After 11 September, Spain intensified efforts to trace the possible contacts of persons in our country with organizations of the type which concerns us.

In 2001, Spain conducted a number of major operations against Islamic terrorist networks, as follows:

- Spain collaborated with Italy in breaking up the "Varesse" group.
- The terrorist Mohamed Bensakhria, who has links to Ben Laden and is the leader of the "Meliani" group, was arrested and extradited to France.
- In September, members of a cell of the Grupo Salafista para la Predicación y el Combate were arrested in different cities in Spain.
- In November, 11 citizens who had ties with Al Qaida were arrested in Madrid.

Spain is also actively collaborating with Europol in regard to the supply and exchange of information on terrorist groups.

2 E. Ensure that any person who commits or collaborates in terrorist acts is brought to justice. Ensure that such terrorist acts are established as serious criminal offences. Ensure that the punishment duly reflects the seriousness of such terrorist acts.

Sub-paragraph (e) – *What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.*

Legislation:

As mentioned under sub-paragraph 1 B and as reflected in the articles of the Penal Code reproduced in Annex I, Spanish penal law includes comprehensive definitions of terrorist offences.

The Penal Code establishes severe penalties for all terrorist offences which are proportional to the seriousness of the offence committed. Terrorist offences are specifically defined and harsher penalties are prescribed for them than for ordinary offences that are not committed for terrorist purposes. For example:

Murder: 15 to 20 years
Murder for terrorist ends: 20 to 30 years

Prosecution of terrorist offences may be carried out through either ordinary or summary proceedings, depending on the penalty stipulated for the act. In either case, the guarantees set forth in article 24 of the Constitution are provided, namely, effective protection, a judge presiding over ordinary proceedings as established by law, right to legal counsel and assistance, public trial without undue delay and with guarantees, use of means of proof for the defence, right not to incriminate oneself and not to confess guilt, and right to the presumption of innocence.

The Organic Law of the judiciary branch (L O 6/1965 of 1 July) establishes that Spanish courts are competent to take cognizance of acts that constitute terrorist offences under Spanish law which are committed by Spanish nationals and foreigners outside the national territory. This is in keeping with the principle of universal justice (art. 23.4).

The Organic Law of the judiciary branch assigns responsibility for considering terrorist offences to a judicial body which has competence throughout the national territory, i.e., the Audiencia Nacional.

Our procedural legislation provides for certain steps to be taken in connection with the investigation of terrorist offences covered by article 55 of the Spanish Constitution. Under this article, an organic law may stipulate how and in what cases –with the requisite court order and adequate parliamentary oversight–the rights referred to in article 17.2 (maximum duration of preventive detention) and article 18.2 and 3 (inviolability of domicile and secrecy of communications) may be suspended for certain persons in connection with investigations pertaining to the action of armed bands or terrorists. Thus, our legislation on penal procedures provides:

Detention by the police may be extended 48 hours beyond the initial 72 hours, provided that such extension is requested in a formal, well-founded communication within the first 48 hours of detention and that it is authorized by the judge within the next 24 hours (art. 520 bis of the criminal prosecution act).

Detainees may be kept incommunicado, by court order (520 bis).

Police authorities may detain suspected terrorists in whatever place or domicile they may be hiding or taking refuge and, in connection with the detention, they may conduct searches in those places and seize the effects and instruments they may find there which might be linked to the offence committed (art. 553 of the criminal prosecution act).

Eavesdropping is allowed when ordered by the Minister of the Interior or, in his absence, by the Director of State Security; the relevant order must be immediately transmitted in writing to the competent judge, who must either revoke or confirm it within a maximum period of 72 hours, clearly stating the reasons for his decision (art. 579.4).

Penalties are proportional to the seriousness of the offence committed and are increased in the case of offences committed for terrorist purposes.

The Penal Code establishes serious penalties for all terrorist offences. Terrorist offences are specifically defined and harsher penalties are prescribed for them than for ordinary offences that are not committed for terrorist purposes. For example:

Murder: 15 to 20 years
Murder for terrorist ends: 20 to 30 years

Under our Penal Code, in all cases of offences linked with terrorist activities, a sentence handed down by foreign judges or courts is brought in line with the equivalent sentence that would be applied by Spanish judges and courts, when the aggravating circumstance of repeat offences exists (art. 580).

2 F. Afford one another assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts.

Sub-paragraph (f) – *What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.*

Legislation:

Spain has ratified 11 of the 12 United Nations conventions on terrorism. The International Convention for the Suppression of the Financing of Terrorism is currently up for ratification in Parliament.

In 1980, Spain signed the European Convention on the Suppression of Terrorism, of 27 January 1977. In recent years, Spain has entered into a number of bilateral agreements on organized crime, including terrorism, which lay down the requirements for cooperation between States Parties.

Thus, Spain has signed bilateral agreements that are directly or indirectly related to the struggle against terrorism, including the following:

*Agreement between Spain and Italy on cooperation in the fight against terrorism and organized crime (12 May 1987)

*Agreement between Spain and Bulgaria for cooperation in the fight against delinquency (21 July 1998)

*Agreement between the Ministers of the Interior of Spain and Hungary for cooperation in the fight against terrorism, illicit international trafficking of narcotic substances and organized crime (2 March 1992)

*Agreement between Spain and the Slovak Republic on cooperation in respect of the fight against organized delinquency (3 March 1999)

*Agreement between Spain and the Russian Federation on cooperation in the fight against delinquency (17 May 1999)

*Agreement between Spain and Poland on cooperation in respect of the fight against delinquency (17 May 1999)

*Agreement between Spain and the People's Republic of China on cooperation in the fight against organized delinquency (25 June 2000)

*Agreement between Spain and Ukraine on cooperation in respect of the fight against delinquency (7 November 2001)

In regard to extradition, Spain has signed the Council of Europe Convention on Extradition and the two European Union conventions of 1995 and 1996. It has also ratified a number of bilateral agreements on the question. Rules

for police cooperation are established in other international and Community instruments which are applicable in Spain, including the Interpol agreement, the Schengen agreement and the Europol agreement.

It is worth mentioning the Conference of Ministers of the Interior of Western Mediterranean Countries, an informal forum for cooperation created in 1995 which meets every year. This group currently includes the ministers of the interior of Algeria, France, Italy, Libya, Malta, Morocco, Portugal, Tunisia and Spain. Terrorism is one of the issues the ministers consider at their annual meetings. In addition, meetings of experts from all the States are held in the framework of the Conference to discuss the different items on its agenda.

In the context of the European Union, the European Convention on Mutual Assistance in Criminal Matters was signed on 29 May 2000. A Protocol to this Convention was signed on 16 October 2001 which provides for additional measures pertaining to judicial assistance in criminal matters with a view to combating delinquency, particularly organized crime, money laundering and financial offences.

The European Union is also in the process of adopting the framework decision on joint investigation teams, which would deal in particular with terrorist offences. The proposal on this decision was submitted by Belgium, Spain, France and the United Kingdom. The draft framework decision also provides for the participation in the joint teams of persons representing the competent authorities of States that are not members of the European Union.

As mentioned above, in the European Union, Spain has promoted the adoption of two instruments -- the European Arrest Warrant and the framework decision on combating terrorism-- that will play a decisive role in encouraging cooperation within the European legal system in the fight against terrorism.

The European Union will soon be adopting the framework decision on the execution in the European Union of orders freezing assets or evidence. The scope of this decision has been broadened to include offences related to terrorism.

In addition to direct and immediate cooperation between judges and magistrates (assistance, freezing of assets, handing over of persons), the European Judicial Network and provisional Eurojust are already in operation. The definitive Eurojust and the joint investigation teams envisaged in the aforementioned European Convention on Mutual Assistance in Criminal Matters will be approved during this month of December.

Steps taken:

Ongoing exchange of information among international police agencies (Interpol, Europol, etc.).

2 G. Prevent the movement of terrorists.

Sub-paragraph (g) – *How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc.?*

Legislation:

The Organic Law on the rights and freedoms of foreigners in Spain includes rules on the entry of foreigners into Spain and the duration of their stay.

Under article 26 of this law and article 26 of the regulations thereto, which were adopted by Royal Decree 884/2001 of 20 July, foreigners shall be refused admittance and their access to Spanish territory shall be prohibited, even if they meet the requirements for admittance when, among other factors,

- It has been found, through diplomatic channels, through Interpol or through any other means of international, judicial or police cooperation, that they are being sought in connection with criminal proceedings arising from serious common offences by the judicial or police authorities of other countries, provided that the acts for which they are sought constitute offences in Spain.
- When they have been expressly barred by a decision of the Minister of the Interior as a result of their having engaged in activities that are contrary to the interests of Spain or in violation of human rights, or of their having well-known connections with national or international criminal organizations.

Likewise, they may be refused entry under the provisions of international agreements to which Spain is a party, unless it is considered necessary to make an exception for humanitarian reasons or on grounds of the national interest.

Steps taken:

Security has been considerably strengthened in aircraft and airports, and at our land and maritime borders.

Investigations are underway to discover clandestine border crossings organized both by members of terrorist organizations and by common criminals.

Selective checks are being made of persons who are nationals of areas where terrorist groups and organizations operate.

Special attention is being paid to persons who might have participated in armed conflicts in geographical areas or countries where terrorist organizations have been formed or where such organizations might have been active.

Local consular cooperation within the European Union is also being strengthened.

Among its objectives for the Presidency of the European Union during the first half of 2002, Spain plans to promote the creation of a European visa databank that will allow authorities to determine in which cases visas have been granted or refused in the European Union countries. It also plans to propose improvements in the operation of the Schengen Information System with a view to enhancing the efficiency of border controls and the fight against terrorism.

3 A. Find ways of intensifying and accelerating the exchange of operational information.

Sub-paragraph (a) – *What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?*

Steps taken since 11 September:

- Strengthening of Europol structures for combating terrorism
- Meetings of chiefs of anti-terrorism units within the European Union
- Preparation, in the framework of the European Union, of a list of terrorist organizations
- Promotion of the creation of joint investigation teams in the European Union

Exchanges of information have also been carried out in the context of bilateral agreements.

3 B. Exchange information on administrative and judicial matters.

Sub-paragraph (b) – *What steps have been taken to exchange information and cooperate in the areas indicated in this sub-paragraph?*

Steps taken

As mentioned above, the adoption of the framework decision on the European Arrest Warrant will promote judicial cooperation within the European Union.

The European Union has strengthened local consular cooperation, as noted above.

3 C. Cooperate through multilateral agreements, to prevent terrorist acts and take action against perpetrators of such acts.

Sub-paragraph (c) – *What steps have been taken to cooperate in the areas indicated in this sub-paragraph?*

Spain has signed a significant number of international instruments relating to the fight against terrorism, including the following:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 (ratified by Spain by Instrument dated 25 August 1969)
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 (ratified by Spain by Instrument dated 30 October 1972)
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 (ratified by Spain by Instrument dated 6 October 1972)
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973 (ratified by Spain by Instrument dated 8 August 1985)
- International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 (ratified by Spain by Instrument dated 9 March 1984)
- Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980 (ratified by Spain by Instrument dated 20 April 1987)
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988 (ratified by Spain by Instrument dated 8 April 1991)
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988 (ratified by Spain by Instrument dated 15 June 1989)
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988 (ratified by Spain by Instrument dated 15 June 1989)
- Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 (ratified by Spain by Instrument dated 23 February 1994)
- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1977 (ratified by Spain by Instrument dated 22 April 1999)

Moreover, in 1980 Spain signed the European Convention on the Suppression of Terrorism, of 27 January 1977, as well as a number of bilateral agreements on organized crime, including terrorism, which lay down the requirements for cooperation between the States Parties, as noted under sub-paragraph 2 F.

3 D. Become parties to the relevant international conventions relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism.

Sub-paragraph (d) – *What are your government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this sub-paragraph?*

As noted above, Spain has ratified 11 of the 12 United Nations Conventions against terrorism. The twelfth, the International Convention for the Suppression of the Financing of Terrorism, was signed by Spain on 8 January

2001 and is currently in Parliament for ratification. It has already been approved by the plenary of the Congress of Deputies and only the Senate's approval is now pending.

3 E. Increase cooperation and fully implement the relevant international conventions relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001).

Sub-paragraph (e) – *Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph.*

As noted above, Spain promotes international cooperation in the struggle against terrorism through its participation in international conventions, especially those adopted by the United Nations. It has also been an active supporter of the comprehensive draft international convention on terrorism which is being negotiated in the United Nations on the basis of the Indian proposal.

Spain has played a decisive role in the adoption by different international organizations of declarations against terrorism, including the following:

*Code of conduct against terrorism adopted by the meeting of experts on terrorism of the Mediterranean Forum (22 February 2000)

*United Nations Educational, Scientific and Cultural Organization (UNESCO) resolution condemning terrorism (20 October 2001)

*Council of Europe statement on international action against terrorism at the 109th session of the Committee of Ministers (8 November 2001)

*Political declaration against terrorism by the Heads of State and Government of the Ibero-American Community meeting in Lima (24 November 2001)

*Ministerial Declaration adopted in Bucharest by the Ministerial Council of the Organization for Security and Co-operation in Europe (OSCE) (3-4 December 2001)

*OSCE decision containing a Declaration and Plan of Action against terrorism (3-4 December 2001)

As regards the North Atlantic Treaty Organization (NATO), the North Atlantic Council issued a statement on 12 September 2001 to the effect that the terrorist attack of 11 September was directed from abroad against the United States and should be regarded as an action covered by Article 5 of the Washington Treaty. Spain promoted the statement on the NATO response to terrorism which was issued by the Ministerial Meeting of the North Atlantic Council on 6 December 2001.

As regards the European Union, Spain has played a very active role as a catalyst for the initiatives adopted after the crisis of 11 September. The ultimate objective is to create an atmosphere of freedom, security and justice in the European Union so that effective measures can be taken against terrorism.

In the area of security and law enforcement, special mention should be made of the conclusions of the special Council of Ministers of Justice and Home Affairs held in Brussels on 20 September and the Conclusions and Plan of Action of the Extraordinary European Council of Heads of State or Government held on 21 September.

In addition to reaffirming its cooperation with the United States, the European Council drew up a plan of action for European policy relating to the fight against terrorism and entrusted the General Affairs Council with the task of coordinating and promoting its global action in the fight against terrorism.

The Declaration issued by the European Council in Ghent on 19 October 2001 and the decisions adopted in a number of its bodies (General Affairs, JAI, JAI-ECOFIN, ECOFIN and Transport) have led to 68 measures being included in the Plan of Action, the implementation of which is among the six priorities of the Spanish Presidency.

At its meeting of 10 December 2001, the General Affairs Council of the European Union reached a political agreement on a number of legislative measures and, in particular, two joint positions and a set of regulations that will enable the Union to take effective action against terrorism, including against the financing thereof. These measures are essential to compliance with the obligations arising from United Nations Security Council resolution 1373.

The Spanish Presidency of the European Union, which begins on 1 January 2002, will focus its strategy on the following four fundamental aspects:

1. Strengthening of instruments for the rule of law throughout the Union. Spain realizes from its own experience that if the rule of law is to address terrorism, it is essential that all the legal systems of the States of the Union be harmonized so that they can work together to eradicate any possibility of terrorists finding safe haven in the territory of the European Union.

In order to ensure this cooperation and harmonization, the Spanish Presidency will build on the agreements reached during the Belgian Presidency as reflected in the conclusions of the Laeken European Council and will focus its efforts on the creation and strengthening of the instruments referred to in the framework decision on combating terrorism, the framework decision on the freezing of assets, mutual recognition of court decisions and the development of Eurojust, among others.

2. Strengthening of cooperation between the security bodies and forces of the Member States.

To this end, the Spanish Presidency considers it necessary to continue working on joint lists of terrorist organizations and joint investigation teams and to make a special effort to strengthen Europol and other means for exchanging and using available information.

3. Response to terrorism in its present dimensions.

The fight against terrorism covers a broad range of activities, from air security to financial transactions. With regard to the latter, the Spanish Presidency attaches special importance to the work of the JAI-ECOFIN Joint Council in areas such as money laundering, freezing of assets and cooperation between financial intelligence units of Member States.

4. International cooperation

The Spanish Presidency expects the European Union to play a decisive role in the fight against the international terrorist network. It will work closely with the United Nations in areas such as the drafting of a comprehensive international convention on terrorism. The Union's relations with third countries will be assessed in the light of the degree to which they cooperate in the fight against terrorism.

In particular, the Spanish Presidency will promote solidarity and cooperate as closely as possible with the United States, both in the international arena and in the narrower sphere of trans-Atlantic relations.

3 F. Take appropriate measures to ensure that asylum-seekers have not planned or facilitated terrorist acts.

Sub-paragraph (f) – *What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status? Please supply examples of any relevant cases.*

In processing requests for asylum, Spain pays special attention to requests submitted by citizens who allegedly advocate ideologies or belong to groups that are linked to terrorist activities.

The administrative procedures for deciding whether to grant asylum are regulated by the aforementioned law on asylum and the regulations thereto, which were approved by Royal Decree 203/1995, of 10 February. The Office of the United Nations High Commissioner for Refugees (UNHCR) plays an active role in this regard, as do other organizations that have been duly authorized to advise and assist refugees. The Spanish Office for Asylum and Refugees may request such reports as it considers necessary from state administrative agencies or any other public entity.

In accordance with the UNHCR Handbook on procedures and criteria for determining refugee status, which is applied in Spain, in denying asylum based on the circumstances envisaged in article 1.F(b) of the Geneva Convention, it is not necessary to prove the existence of criminal proceedings in respect of the acts mentioned in the article in question.

3 G. Ensure that refugee status is not abused by terrorists and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

Sub-paragraph (g) – *What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.*

Under article 3.2 of the law on asylum, which is based on the Geneva Convention, the principle of non-return may not be applied to refugees in respect of whom there is good reason to believe that they represent a threat to the security of the country in which they are living at the time. This principle may be understood to include persons who have been involved in terrorist activities.

The passive extradition law of 21 March 1985 precludes considering terrorist acts as political offences for purposes of refusing extradition.

If it is found, after refugee status has been granted, that a person has committed terrorist acts, the status of refugee may be revoked, in accordance with the procedure envisaged in Spanish domestic legislation.

Paragraph 4. – The Security Council notes with concern the close connection between international terrorism and organized crime, illicit drugs, money-laundering, illegal arms trafficking and illegal movement of nuclear, chemical and biological materials.

Single paragraph. *Coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security.*

Spain's law on the prevention of money laundering (law 19/1993, of 28 December) takes a unified approach towards money-laundering operations and other economic consequences of activities involving organized crime, terrorism and illegal drug trafficking.

Spain has entered into a number of bilateral agreements on organized crime which cover many different manifestations of such crime (terrorism, illegal drug trafficking, illegal arms trafficking and illegal movement of nuclear, radioactive, explosive and toxic materials and financing of criminal activities).

At both the bilateral level and in the different regional and global forums in which it participates, Spain promotes international cooperation and coordination in the fight against the plague of terrorism.

On the domestic front, the work of the different State security forces and entities, the autonomous communities and the local corporations is coordinated through a special agency, namely the Juntas de Seguridad. The general

administration of the State coordinates the activities of the administrative bodies that are responsible for civil protection.

In the framework of the European Union, and in keeping with the conclusions of the Laeken European Council, the Spanish Presidency will promote the creation of a European civil protection agency. This agency would implement a programme for protecting the population of the European Union from nuclear, biological and chemical (NBC) attacks, including preparations for coordinated action by NBC intervention teams in member countries.

Anexo I

"Artículo 571

Los que perteneciendo, actuando al servicio o colaborando con bandas armadas, organizaciones o grupos cuya finalidad sea la de subvertir el orden constitucional o alterar gravemente la paz pública, cometan los delitos de estragos o de incendios tipificados en los artículos 346 y 351, respectivamente, serán castigados con la pena de prisión de quince a veinte años, sin perjuicio de la pena que les corresponda si se produjera lesión para la vida, integridad física o salud de las personas. .

Artículo 572

1. Los que perteneciendo, actuando al servicio o colaborando con las bandas armadas, organizaciones o grupos terroristas descritos en el artículo anterior, atentaren contra las personas, incurrirán:

1°) En la pena de prisión de veinte a treinta años si causaran la muerte de una persona.

2°) En la pena de prisión de quince a veinte años si causaran lesiones de las previstas en los artículos 149 y 150 o secuestraran a una persona.

3°) En la pena de prisión de diez a quince años si causaran cualquier otra lesión o detuvieran ilegalmente. amenazaran o coaccionaran a una persona.

2. Si los hechos se realizaran contra las personas mencionadas en el apartado 2 artículo 551 o contra miembros de las Fuerzas Armadas, de las Fuerzas y Cuerpos de Seguridad del Estado, Policías de las Comunidades Autónomas o de los Entes locales, se impondrá la pena en su mitad superior.

Artículo 573

El depósito de armas o municiones o la tenencia o depósito de sustancias o aparatos explosivos. inflamables, incendiarios o asfixiantes, o de sus componentes, así como su fabricación, tráfico, transporte o suministro de cualquier forma, y la mera colocación o empleo de tales sustancias o de los medios o artificios adecuados, serán castigados con la pena de pri-

sión de seis a diez años cuando tales hechos sean cometidos por quienes pertenezcan, actúen al servicio o colaboren con las bandas armadas, organizaciones o grupos terroristas descritos en los artículos anteriores.

Artículo 574

Los que perteneciendo, actuando al servicio o colaborando con bandas armadas, organizaciones o grupos terroristas, cometan cualquier otra infracción con alguna de las finalidades expresadas en el artículo 571, serán castigados con la pena señalada al delito o falta ejecutados en su mitad superior.

Artículo 575

"Los que, con el fin de allegar fondos a las bandas armadas, organizaciones o grupos terroristas señalados anteriormente, o con el propósito de favorecer sus finalidades, atentaren contra el patrimonio, serán castigados con la pena superior en grado a la que correspondiere por el delito cometido, sin perjuicio de las que proceda imponer conforme a lo dispuesto en el artículo siguiente por el acto de colaboración."

Artículo 576

"1. Será castigado con las penas de prisión de cinco a diez años y multa de dieciocho a veinticuatro meses el que lleve a cabo, recabe o facilite, cualquier acto de colaboración con las actividades o las finalidades de una banda armada, organización o grupo terrorista.

2. Son actos de colaboración la información o vigilancia de personas, bienes o instalaciones; la construcción, el acondicionamiento, la cesión o la utilización de alojamientos o depósitos; la ocultación o traslado de personas vinculadas a las bandas armadas, organizaciones o grupos terroristas; la organización de prácticas de entrenamiento o la asistencia a ellas, y, en general, cualquier otra forma equivalente de cooperación, ayuda o mediación, económica o de otro género, con las actividades de las citadas bandas armadas, organizaciones o grupos terroristas."

La previsión como delito de conductas relacionadas con terrorismo se completa con la regulación en el propio Código Penal del blanqueo de capitales. Así resulta del artículo 301 y siguientes del Código, cuyo texto se recoge en el Anexo No. II.

La incoación del procedimiento por estos delitos conlleva la intervención del dinero, efectos u otros bienes con que se haya cometido, el producto de los mismos y sus efectos. Esta intervención puede ser cautelar, mientras dura el procedimiento. Lo permiten y justifican los artículos 13, 326, 334 y 589 de la Ley de Enjuiciamiento Criminal. En tanto, se deben salvaguardar los efectos e instrumentos del delito, los medios de prueba y las responsabilidades pecuniarias derivadas de aquel, se puede proceder sin demora al bloqueo de cuentas bancarias y demás medidas de intervención cautelar de fondos de los responsables del delito.

A parte de la intervención cautelar, ya en sentencia los bienes y fondos empleados para ayuda de los fines terroristas, desde la preparación del delito, habrán de ser objeto de comiso por ser "efectos del delito, instrumentos con que se ha ejecutado y ganancias, cualquiera que fueren las transformaciones que hubieran podido experimentar" (artículo 127 del Código Penal). Al adelantarse la persecución penal del terrorismo a los primeros momentos, el comiso será de todo lo empleado en su preparación y, por ello, a esto se extenderá la "congelación de fondos" judicialmente.

Artículo 577

Los que, sin pertenecer a banda armada, organización o grupo terrorista, y con la finalidad de subvertir el orden constitucional o de alterar gravemente la paz pública. o la de contribuir a estos fines atemorizando a los habitantes de una población o a los miembros de un colectivo social, político o profesional, cometieren homicidios, lesiones de las tipificadas en los artículos 147 a 150, detenciones ilegales, secuestros, amenazas o coacciones contra las personas, o llevaren a cabo cualesquiera delitos de incendios, estragos, daños de los tipificados en los artículos 263 a 266, 323 ó 560, o tenencia, fabricación, depósito, tráfico, transporte o suministro de armas, municiones o sustancias o aparatos explosivos, inflamables, incendiarios o asfixiantes, o de sus componentes, serán castigados con la pena que corresponda al hecho cometido en su mitad superior.

Artículo 578

El enaltecimiento o la justificación por cualquier medio de expresión pública o difusión de los delitos comprendidos en los artículos 571 a 577 de este Código o de quienes hayan participado en su ejecución, o la realización de actos que entrañen descrédito, menosprecio o humillación de las víctimas de los delitos terroristas o de sus familiares se castigará

con la pena de prisión de uno a dos años. El Juez también podrá acordar en la sentencia, durante el período de tiempo que el mismo señale, alguna o algunas de las prohibiciones previstas en el artículo 57 de este Código.

Artículo 579

1. La provocación. la conspiración y la proposición para cometer los delitos previstos en los artículos 571 a 578 se castigarán con la pena inferior en uno o dos grados a la que corresponda, respectivamente, a los hechos previstos en los artículos anteriores.

2. Los responsables de los delitos previstos en esta sección, sin perjuicio de las penas que correspondan con arreglo a los artículos precedentes, serán también castigados con la pena de inhabilitación absoluta por un tiempo superior entre seis y veinte años al de la duración de la pena de privación de libertad impuesta, en su caso, en la sentencia, atendiendo proporcionalmente a la gravedad del delito, el número de los cometidos y a las circunstancias que concurran en el delincuente.

3. En los delitos previstos en esta sección, los Jueces y Tribunales, razonándolo en sentencia, podrán imponer la pena inferior en uno o dos grados a la señalada por la Ley para el delito de que se trate, cuando el sujeto haya abandonado voluntariamente sus actividades delictivas y se presente a las autoridades confesando los hechos en que haya participado y además colabore activamente con éstas para impedir la producción del delito o coadyuve eficazmente a la obtención de pruebas decisivas para la identificación o captura de otros responsables o para impedir la actuación o el desarrollo de bandas armadas, organizaciones o grupos terroristas a los que haya pertenecido o con los que haya colaborado.

Artículo 580

"En todos los delitos relacionados con la actividad de las bandas armadas, organizaciones o grupos terroristas, la condena de un Juez o Tribunal extranjero será equiparada a las sentencias de los Jueces o Tribunales españoles a los efectos de aplicación de la agravante de reincidencia."

Además de la comisión de delitos con fines terroristas, está previsto como delito la mera pertenencia a banda armada o grupo terrorista.

Así, él artículo 515 del Código Penal considera como "asociación ilícita":

... 2°) "Las bandas armadas, organizaciones o grupos terroristas".

Las penas se establecen en el artículo 516:

"En los casos previstos en el número 2° artículo anterior, se impondrán las siguientes penas:

1°) A los promotores y, directores de las bandas armadas y organizaciones terroristas, y a quienes dirijan cualquiera de sus grupos, las de prisión de ocho a catorce años y de inhabilitación especial para empleo o cargo público por tiempo de ocho a quince años.

2°) A los integrantes de las citadas organizaciones, la de prisión de seis a doce años, e inhabilitación especial para empleo o cargo público por tiempo de seis a catorce años."

El artículo 519 del Código Penal tipifica la provocación, conspiración y proposición para cometer el delito de asociación ilícita, señalando pena inferior en uno o dos grados a la que corresponde por aplicación del artículo 516.

Dos últimos preceptos se ocupan de estas conductas: el artículo 520, para prever la disolución de la asociación ilícita o cualquier otra posible consecuencia accesoria del artículo 129 del Código; y el artículo 521, para agravar la pena del delito de asociación ilícita cuando se cometa por autoridad, agente de la misma o funcionario público.

Anexo II

Artículo 301

1. El que adquiera, convierta o transmita bienes, sabiendo que éstos tienen su origen en un delito grave o realice cualquier otro acto para ocultar o encubrir su origen ilícito, o para ayudar a la persona que haya participado en la infracción o infracciones a eludir las consecuencias legales de sus actos, será castigado con la pena de prisión de seis meses a seis años y multa del tanto al triplo del valor de los bienes.

Las penas se impondrán en su mitad superior cuando los bienes tengan su origen en alguno de los delitos relacionados con el tráfico de drogas tóxicas, estupefacientes o sustancias psicotrópicas descritos en los artículos 368 a 372 de este Código.

2. Con las mismas penas se sancionará, según los casos, la ocultación o encubrimiento de la verdadera naturaleza, origen, ubicación, destino, movimiento o derechos sobre los bienes o propiedad de los mismos, a sabiendas de que proceden de alguno de los delitos expresados en el apartado anterior o de un acto de participación en ellos.

3. Si los hechos se realizasen por imprudencia grave, la pena será de prisión de seis meses a dos años y multa del tanto al triplo.

4. El culpable será igualmente castigado aunque el delito del que provinieren los bienes, o los actos penados en los apartados anteriores hubiesen sido cometidos, total o parcialmente, en el extranjero.

Artículo 302

En los supuestos previstos en el artículo anterior se impondrán las penas privativas de libertad en su mitad superior a las personas que pertenezcan a una organización dedicada a los fines señalados en los mismos, y la pena superior en grado a los jefes, administradores o encargados de las referidas organizaciones.

En tales casos, los Jueces o Tribunales impondrán, además de las penas correspondientes, la de inhabilitación especial del reo para el ejercicio de su profesión o industria por tiempo de tres a seis años, y podrán decretar, asimismo, alguna de las medidas siguientes:

a) Disolución de la organización o clausura definitiva de sus locales o establecimientos abiertos al público.

b) Suspensión de las actividades de la organización, o clausura de sus locales o establecimientos abiertos al público por tiempo no superior a cinco años.

c) Prohibición a las mismas de realizar aquellas actividades, operaciones mercantiles o negocios, en cuyo ejercicio se haya facilitado o encubierto el delito, por tiempo no superior a cinco años.

Artículo 303

Si los hechos previstos en los artículos anteriores fueran realizados por empresario, intermediario en el sector financiero, facultativo, funcionario público, trabajador social, docente o educador, en el ejercicio de su cargo, profesión u oficio, se le impondrá, además de la pena correspondiente, la de inhabilitación especial para empleo o cargo público, profesión u oficio, industria o comercio, de tres a diez años. Se impondrá la pena de inhabilitación absoluta de diez a veinte años cuando los referidos hechos fueren realizados por autoridad o agente de la misma.

A tal efecto, se entiende que son facultativos los médicos, psicólogos, las personas en posesión de títulos sanitarios, los veterinarios, los farmacéuticos y sus dependientes.